

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

Wayne Carter, Toni Cellucci, and Stacey Durgin,  
Individually and on Behalf of all Other Similarly  
Situated Persons,

Plaintiffs,

- v -

Dkt. # 1:07-cv-00023-SM

John A. Stephen, Commissioner of the New  
Hampshire Department of Health and Human  
Services, in his official capacity,

Defendant.

**AFFIDAVIT OF W. SCOTT O'CONNELL**

NOW COMES the Affiant and on his oath deposes and says as follows:

1. My name is W. Scott O'Connell. I am a partner with the firm of Nixon Peabody, LLP, 900 Elm Street, Manchester, New Hampshire 03101. I have been a practicing lawyer in New Hampshire since 1992.
2. I am a member in good standing of the bars of New Hampshire, Vermont, Maine, Massachusetts, and the District of Columbia. I am admitted in and have active status with the United States District Court for the Districts of New Hampshire, Vermont, Maine, and Massachusetts; the United States Court of Appeals for the First, Second, and Tenth Circuits; and District of Columbia, Court of Appeals. I am currently admitted *pro hac vice* in proceedings in California, New Jersey, New York, Florida, Ohio, Utah, and Hawaii.

3. I have never been the subject of professional disciplinary action.
4. My principal specialty during my years of practice has been complex commercial litigation and class action defense involving both state and federal claims. I have tried numerous

cases in state, federal, administrative and private forums in New Hampshire and elsewhere, and I have handled litigation matters involving federal and state constitutional issues. I currently serve as national coordinating counsel for KeyBank National Association in the defense of consumer class actions pending in federal and state courts throughout the country.

5. At Nixon Peabody, I am the Practice Group Leader for Financial Services and Securities Litigation. As a result, I have administrative and management responsibilities for approximately 35 attorneys of our approximately 700 total attorneys, all of whom focus on complex commercial disputes and class action defense. Among other things, I assist with the annual process of establishing hourly rates for our attorneys and paralegals working in our 16 offices including Manchester, New Hampshire. As a result, I am familiar with the New Hampshire market for hourly rates charged for complex legal services.

6. I was asked by New Hampshire Legal Assistance (“NHLA”) to serve as an expert witness on the issue of what would be comparable 2008 rates under New Hampshire practice for the work performed by the plaintiffs’ legal team in this case.

7. In preparation for rendering my opinion, I reviewed correspondence from Kay E. Drought, Litigation Director for NHLA, on the nature of the services performed by the various legal personnel; plaintiffs’ class action complaint; The Carter parties’ Motion for Preliminary Approval of Proposed Class Action Settlement, including all attachments; and the Pacer docket report on this case. During this review, I considered the complexity of the litigation and special skill, learning, and experience necessary to handle such a matter

8. As a result of my review, I concluded that comparable Nixon Peabody New Hampshire rates for the legal personnel involved in this case would be as follows:

a. **Marc Cohan, National Center for Law and Economic Justice.** Based upon experience, education, and responsibility in the matter, comparable New Hampshire attorneys at this firm would have an hourly rate of between \$450 and \$475.

b. **Kay Drought, NHLA.** Based upon experience, education, and responsibility in the matter, comparable New Hampshire attorneys at this firm would have an hourly rate of between \$445 and \$465.

c. **Aaron Ginsberg, Disabilities Rights Center, Inc. ("DRC")**. Based upon experience, education, and responsibility in the matter, comparable New Hampshire attorneys at this firm would have an hourly rate of between \$215 and \$250.

d. **Christine Lavallee, NHLA.** Based upon experience, education, and responsibility in the matter, comparable New Hampshire attorneys at this firm would have an hourly rate of between \$310 and \$340.

e. **Mary R. Mannix, National Center for Law and Economic Justice.** Based upon experience, education, and responsibility in the matter, comparable New Hampshire attorneys at this firm would have an hourly rate of between \$460 and \$485.

f. **Amy Messer, DRC.** Based upon experience, education, and responsibility in the matter, comparable New Hampshire attorneys at this firm would have an hourly rate of between \$420 and \$445.

g. **Ben Mortell, NHLA.** Based upon experience, education, and responsibility in the matter, comparable New Hampshire attorneys at this firm would have an hourly rate of between \$310 and \$340.

h. **Laura Redman, National Center for Law and Economic Justice.**

Based upon experience, education, and responsibility in the matter, comparable New Hampshire attorneys at this firm would have an hourly rate of between \$280 and \$315.

These rates would be subject to adjustment in consideration of the factors listed in Rule 1.5(a) of the Professional Conduct Rules.

Respectfully submitted,

W. SCOTT O'CONNELL

Date: March 28, 2008

/s/ W. Scott O'Connell

STATE OF NEW HAMPSHIRE  
HILLSBOROUGH, SS.

This instrument was acknowledged before me on March 28, 2008, by W. Scott O'Connell.

/s/ Cheryl Noonan  
Notary Public  
My commission expires: July 13, 2010